

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE:

MEDCO/EXPRESS SCRIPTS MERGER
LITIGATION

Civil Action No. 11-4211 (DMC) (MF)

**STIPULATION AND AGREEMENT TO DISMISS PENDING
INTERLOCUTORY APPEAL PURSUANT TO RULE 42(a) OF THE FEDERAL
RULES OF APPELLATE PROCEDURE**

WHEREAS, Express Scripts, Inc., Aristotle Holding, Inc., Aristotle Merger Sub, Inc., Plato Merger Sub, Inc., Medco Health Solutions, Inc., David B. Snow, Jr., Michael Goldstein, Howard W. Barker, Jr., John L. Cassis, Charles M. Lillis, Myrtle Potter, William L. Roper, David D. Stevens, and Blenda J. Wilson (the “Defendants”), and Plaintiffs, by their undersigned attorneys as set forth below, constituting all of the parties (the “Parties”) to the above-captioned action (the “Action”), pursuant to Rule 42(a) of the Federal Rules of Appellate Procedure, hereby stipulate and agree to dismiss the pending interlocutory appeal petition filed on October 31, 2011, in the United States Court of Appeals for the Third Circuit (the “Appeal”);

WHEREAS, the Defendants filed a Petition for Permission to Appeal under 28 U.S.C. § 1292(b) in the United States Court of Appeals for the Third Circuit on or about October 31, 2011;

WHEREAS, on November 7, 2011, the Parties entered into a Memorandum of Understanding in which the Parties agreed in principle to settle the Action (the “MOU”);

WHEREAS, on November 7, 2011, as contemplated in the MOU, the Parties notified this Court and the United States Court of Appeals for the Third Circuit of the MOU, and sought a stay of all proceedings in the United States Court of Appeals for the Third Circuit pending settlement of the Action;

WHEREAS, on November 25, 2011, the Parties entered into a Stipulation and Agreement of Compromise, Settlement and Release, providing for, among other things, the settlement and dismissal of the Action as well as the related case captioned *In re Medco Health Solutions Inc. Shareholders Litigation*, C.A. No. 6720-CS pending before the Delaware Court of Chancery, and release of all claims asserted in both actions, and dismissal of the Appeal;

WHEREAS, on April 16, 2012, the Court held a settlement hearing;

WHEREAS, on April 18, 2012, the Court approved the Settlement and entered a Final Order and Judgment dismissing the Action;

WHEREAS, the United States Court of Appeals for the Third Circuit has not entered an order pursuant to Federal Rule of Appellate Procedure 5(d) granting permission to appeal and as a result an appeal in this action has not been docketed by the Clerk of the Court of Appeals;

WHEREFORE, the Parties hereby stipulate and agree that the Appeal should be dismissed without costs forthwith.

SO STIPULATED AND AGREED THIS 20TH DAY OF APRIL 2012:

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SO ORDERED:


DENNIS M. CAVANAUGH, U.S.D.J.

4/25/12